

COMMONWEALTH OF KENTUCKY
HANCOCK CIRCUIT COURT
CIVIL ACTION NO. 18-CI-00069

ENTERED
MICHAEL T. BOLING
MAY 10 2019
HANCOCK CIRCUIT COURT CLERK
BY: *MTB*

DOROTHY M. MUNSON
MICHELE A. NELSON
MELANIE D. NELSON
MICHAEL S. NELSON
MARLANA NELSON WADDELL
DONALD MUNSON, and
MATTHEW WADDELL

PETITIONERS

vs.

JAMES A. NELSON

RESPONDENT

JUDGMENT

THIS MATTER was tried on April 22, 2019, before this Court sitting without a jury. The Petitioners were represented by Paul L. Madden, Jr. and Daniel T. Boling of Madden & Madden, Attorneys at Law. The Respondent filed a *Pro Se* Answer to the Petition and been given ample and reasonable notice of the trial, but failed to appear at the trial, and the Court reviewed the record and not finding any sustainable reason not to proceed, it is Ordered that the Plaintiffs proceed with their evidence. The bailiff call in the hall for the Defendant and the Defendant did not answer the call. The Court heard from the Petitioners, the testimony of their expert witness and with the submission of the case and being otherwise duly and sufficiently advised in the particulars, HEREBY makes the following Findings of Fact, Conclusions of Law and enters the following Judgment of the Court:

1. Tract one which is identified as the James G. Nelson Tract or as the Greathouse Tract consist of approximately 204 acres located along Ky. HWY 334, in Lewisport, Kentucky,

FCM - All Parties

and is identified by the Hancock Property Valuation Administrator in Map No. 01, Parcel No. 05.

2. The Court finds that ownership of the 204 acre tract of land or "James G. Nelson Tract" is consistent with Attorney Robert F. Sexton's title opinion testimony which provided that present ownership of the land is vested as follows: James A. Nelson, an undivided 1/3 interest; Dorothy M. Munson, an undivided 1/3 interest; Michele A. Nelson, an undivided 1/12 interest; Melanie D. Nelson, an undivided 1/12 interest; Michael S. Nelson, an undivided 1/12 interest; and Marlana Nelson Waddell, an undivided 1/12 interest. Each of the Petitioners is unmarried with the exception of Marlana Nelson Waddell and Dorothy M. Munson. Marlana Nelson Waddell is married to Matthew Waddell and Dorothy M. Munson is married to Donald Munson. Both Matthew Waddell and Donald Munson are before the Court and their only legal interest in the subject property is expectancy of dower. The Respondent, James A. Nelson, is also unmarried.
3. The Second tract is identified as the "Anna Byers Tract" consisting of 140 acres. It is identified in the Hancock Property Valuation Administrator by Map No. 01, Parcel 07.
4. The Court finds that ownership of the 140 acre tract or the "Anna Byers Tract" is consistent with Attorney Robert F. Sexton's title opinion testimony which provided that present ownership of the land is vested as follows: James A. Nelson, an undivided 1/2 interest; Michele A. Nelson, an undivided 1/8 interest; Melanie D. Nelson, an undivided 1/8 interest; Michael S. Nelson, an undivided 1/8 interest; and Marlana Nelson Waddell, an undivided 1/8 interest.
5. The Court finds that both the James G. Nelson (204 acres) and the Anna Byers (140 acres) tracts of land are indivisible as they lay in areas that often flood and the flooding is

unequal across the properties; portions of the two tracts lay north of Hwy 334; other portions lay south of HWY 334; certain parts of the tracts have road frontage while other do not; physical partition would materially impair the value and would be equitable.

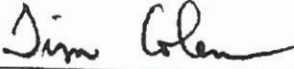
6. The 2019 crops grown on the property are currently subject to lease and will continue to be raised as done in previous years. The Petitioners and Respondent shall be awarded the 2019 profits from the sell of said crops in correspondence with their respective ownership interest in each tract of land as identified above.
7. Any proceeds from the sale of crops for years prior to 2019 likewise should have been divided in accordance with the findings above in paragraphs 2 and 4. Any funds being held by attorneys for Petitioners may be distributed.

Based upon the above, the Court Orders the following:

- a. The Hancock County Master Commissioner, Harold Wayne Newton, shall have the properties identified herein sold at public sale subject to the terms described below, for cash, and subject to confirmation by this Court on sworn report of the sale, and shall do those things necessary to carry out the judgment of this Court and make a report of his proceedings to the Court.
- b. The 204 acre tract of land referred to as the James G. Nelson Tract shall be sold through the Hancock County Master Commissioner with the sale being conducted and advertised by Kurtz Auction & Realty Co. In addition to the advertising by Kurtz Auction and Realty Co. the Hancock County Master Commissioner shall advertise as required by statute. Kurtz Auction and Realty Co. shall receive 4.5% of the sale which includes all advertising as agreeable with Petitioners. The fees of the Hancock County Master Commissioner shall be deducted from that portion payable to Kurtz Auction & Realty

- Co. (4.5% less Hancock County Master Commissioner's Fee). All other costs including Petitioners' attorney fees shall be paid from the sale proceeds.
- c. The 140 acre tract of land referred to as the Anna Byers Tract shall not be sold until a motion is made by any of the Petitioners requesting a sale. If this property is sold it shall be sold in the manner described above in paragraph A and any additional costs and attorney fees shall be shared by the Parties owning this tract.
 - d. All sale proceeds from the tracts above shall be divided by the Hancock County Master Commissioner in the ownership proportions and respective interests identified above in paragraphs 2 and 4 above after payment of all costs, Hancock County Master Commissioner fees and attorney fees having been paid.
 - e. The Hancock County Master Commissioner shall tender a confirmation and a report of sale and order for division of proceeds prior to distribution.

This the 8 day of May, 2019


TIMOTHY R. COLEMAN, JUDGE
HANCOCK CIRCUIT COURT

PREPARED BY:

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